

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 NO. C 07-02757 SBA
4 DONNA MATHEWS
5 VERSUS
6 PAN AMERICAN LIFE INSURANCE COMPANY; and
7 DOE 1 through Doe 20, Inclusive

8 VOLUME 2

9 Video deposition of CORY SIMON, 601
10 Poydras Street, 10th Floor, New Orleans,
11 Louisiana 70130, taken in the offices of
12 AFFILIATED REPORTING on Thursday, March
13 13, 2008.

14 APPEARANCES:

15 LAW OFFICES OF MICHAEL E. KINNEY
16 Attorney at Law
17 BY: MICHAEL E. KINNEY, ESQUIRE
18 438 First Street, Fourth Floor
19 Santa Rosa, California 95401
20 ATTORNEY FOR PLAINTIFF
21 REED SMITH
22 Attorneys at Law
23 BY: THOMAS A. EVANS, ESQUIRE
24 1999 Harrison Street, Suite 2400
25 Oakland, California 94612
26 ATTORNEYS FOR PAN AMERICAN LIFE

19 VIDEOGRAPHER: KARL STIEGMAN

20 ALSO PRESENT: PATRICK C. FRAIZER
21 REPORTED BY:
22 THERESA MATHERNE
23 Certified Court Reporter
24 Registered Professional Reporter
25
26

1 DONNA MATHEWS VS. PAN AMERICAN LIFE
2 INSURANCE COMPANY; and DOE 1 through Doe 20,
3 Inclusive
4 VOLUME 2
5 Video deposition of CORY SIMON
6 Taken on March 13, 2008

7

8

9 EXHIBIT INDEX

10 3. Disability income policy.
11 4. Income protection policy.
12 5. Medical director's form.
13 6. Letter dated May 3, 2006.
14 7. Letter from Michael Jones.
15 8. Document.

16

17

18

19

20

21

22

23

24

25

26

INDEX

		Page	Line
3			
4	EXHIBIT # 3	90	7
5	EXHIBIT # 4	96	6
6	EXHIBIT # 5	128	11
7	EXHIBIT # 6	130	12
8	EXHIBIT # 7	133	17
9	EXHIBIT # 8	134	15

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 1 MR. KINNEY:

2 2 We're back on the record after
3 3 lunch. Let me just say for the
4 4 record, because the court reporter
5 5 had to leave, we changed court
6 6 reports here. And we closed out the
7 7 initial written transcript as
8 8 Volume 1, as the period that took
9 9 place prior to lunch. We're now
10 10 starting on Volume 2.

11 11 Mr. Simon, you're still under
12 12 oath, the same oath you took at the
13 13 beginning of the deposition.

14 14 THE WITNESS:

15 15 I understand.

16 16 MR. KINNEY:

17 17 I understand, Mr. Evans, you may
18 18 have came to a conclusion as to your
19 19 attorney-client privilege objection.

20 20 MR. EVANS:

21 21 Yes. As to any communications
22 22 with in-house counsel regarding the
23 23 claim, any opinions rendered by
24 24 in-house counsel, we are invoking the
25 25 privilege, recognizing that in doing

26

1 so we will not be raising the advice
2 of counsel and reliance on that
3 counsel's opinion as a defense in
4 this case. Is that sufficient?

5 MR. KINNEY:

6 That's sufficient. So just to
7 make sure I got it clear, you're
8 telling me that I'm not going to be
9 allowed to ask any questions of that
10 meeting we started to go down?

11 MR. EVANS:

12 That's correct. The fact of the
13 meeting is fine, but we won't discuss
14 either the substance or to any
15 conclusions from it.

16 MR. KINNEY:

17 Okay.

18 EXAMINATION BY MR. KINNEY:

19 Q. Since December of 2005, has Pan American
20 made any changes in its claim handling
21 process or for claims for rehabilitation
22 benefits?

23 A. No.

24 Q. Back at the beginning of the deposition,
25 Mr. Evans advised that you were designated

26

1 as the company's person most knowledgeable
2 on certain subjects. Among those subjects
3 was the language, certain language that I
4 asked about regarding two insurance
5 policies that are involved in this case.

6 The first of those policies that I want
7 to talk about, I guess, is a policy called
8 "A disability income policy." Are you
9 familiar with Pan American Disability
10 Income Policy that's involved in the
11 Mathews case?

12 A. I am.

13 Q. There's also a second policy that's called
14 "An income protection policy." Are you
15 familiar with that policy as well?

16 A. I am.

17 Q. In general, in the broadest terms, can you
18 describe the difference between the two
19 policies?

20 A. Generally, the disability income policy is
21 to pay for courses of disability, whereas
22 income protective policy is specifically
23 designed to pay for losses of income
24 exceeding 20 percent.

25 Q. Okay. Is it common for insurers to have

26

1 both policies?

2 MR. EVANS:

3 Objection. Vague.

4 BY MR. KINNEY:

5 Q. If you know.

6 A. I have seen other insurers have both
7 policies.

8 Q. Is it your experience handling disability
9 claims that disability policies, in
10 general, are either own-occupational
11 policies or all-occupational policies?

12 A. That's correct.

13 Q. The disability income policy in the
14 Mathews case, do you know whether that's
15 an own-occupation policy or an
16 all-occupation policy?

17 A. I believe the disability income is
18 all-occupations.

19 Q. Let's take a look at that policy now.

20 A. All right.

21 Q. Let's mark this as Exhibit 3.

22 MR. KINNEY:

23 By the way, let me inform the
24 court reporter. What we're doing,
25 because we're gonna have some other

26

1 people take depositions in this case,
2 we're gonna bind the exhibits
3 separately into a separate binder.
4 And then we're gonna use the same
5 exhibit numbers for subsequent
6 depositions.

10 BY MR. KINNEY:

11 Q. So I'll show you now a document, which we
12 marked as Exhibit 3 for purposes of this
13 deposition, and ask you if that appears to
14 be the disability income policy that
15 pertains to Ms. Mathews' claim?

16 A. It is.

17 Q. Now, I directed you to page, bates stamp
18 PAL0945, the definitions page. Do you see
19 that?

20 A. Uh-huh.

21 Q. I direct you down to the definition of
22 total disability. Do you see that?

23 A. I do.

24 Q. I'd like you to read the definition of
25 total disability under this policy and ask

1 if that changes your opinion as to whether
2 this is an own-occupation or
3 all-occupation policy?

4 A. "Cannot work at your regular job because
5 of injury or sickness during the first
6 five years of disability following five
7 years of total disability. Total
8 disability requires that you do not be
9 engaged in any type of paid work."

10 Q. So for the first five years this was an
11 own-occupation policy?

12 A. That's correct.

13 Q. Then it turned into an all-occupation
14 policy?

15 A. That's correct.

16 Q. I like you to turn to page six of this
17 policy. And on page six in the left
18 column, you'll see a section entitled
19 "rehabilitation." Do you see that?

20 A. I do see that.

21 Q. And you've been designated as the person
22 most knowledgeable at Pan American Life
23 regarding that section. So I take it you
24 read that section before; is that correct?

25 A. I have.

26

1 Q. The first sentence says, "We will pay for
2 a rehabilitation program if we approve it
3 in advance." Do you see that?

4 A. I do.

5 Q. Is it your opinion that Pan American Life
6 Insurance Company has unfettered
7 discretion as to its approval of a
8 disability policy, rehabilitation plan?

9 MR. EVANS:

12 BY MR. KINNEY:

13 Q. You may answer.

14 A. No, I don't believe that we have
15 unfettered discretionary to appr
16 disapprove.

17 Q. What are the limits placed upon your
18 ability to approve or disapprove?

19 A. That we receive sufficient proof from the
20 claimant that once again will indicate how
21 this benefit is going to return her to an
22 occupation suitable for her limitations.

23 Q. So is it your testimony today that if such
24 proof is forthcoming from the claimant,
25 Pan American must provide payment for a

1 rehabilitation program?

2 MR. EVANS:

3 Objection. Incomplete

4 hypothetical. Calls for speculation.

5 BY MR. KINNEY:

6 Q. You can answer.

7 A. If we receive proof sufficient to us, we
8 would extend this benefit.

9 Q. The next sentence says, "The extent of our
10 payment will be what we state in our
11 written approval." Do you see that?

12 A. That's correct.

13 Q. How does Pan American go about deciding
14 what the extent of its payment should be?

15 A. Well, from this particular policy line,
16 which we would have determined that if the
17 insurer had provided us, once again, with
18 the course of study, the hours of study,
19 the cost of tuition, books and things of
20 that nature.

21 Q. Would it be a factor in Pan American's
22 determination of how much that cost?

23 A. I couldn't tell you that. I don't know.
24 I would say that we would believe that it
25 would be usual and reasonable for that

26

1 course of education.

2 Q. Is there any upper limit on how much Pan
3 American would pay for a rehabilitation
4 program?

5 A. Not to my knowledge.

6 Q. Next sentence says, "We will not pay for
7 any rehabilitation expenses covered by
8 another source." Do you see that?

9 A. I do.

10 Q. What source of expenses does this policy
11 contemplate?

12 A. She may be receiving, you know, the
13 insured could be receiving state financial
14 aid, local financial aid, or other
15 educational assistance through an
16 educational organization.

17 Q. And the final sentence says, "This payment
18 will have no affect on any other benefit
19 of this policy." Do you see that?

20 A. That's correct.

21 Q. Do you know how much does this particular
22 policy pay?

23 A. I don't know which policy number this is.

24 Q. If you look in here somewhere, does it
25 explain?

26

1 A. No, it does not.

2 Q. The amount of benefits. It does not?

3 A. It does not.

4 MR. EVANS:

5 And to that extent, I object to

6 this. It is an incomplete copy.

7 There should be some sort of benefit

8 summary attached to this.

9 MR. KINNEY:

10 Okay.

11 BY MR. KINNEY:

12 Q. So you look to a different page of benefit

13 summary to find out what the benefits are

14 here?

15 A. There was a schedule of benefits that

16 accompanies this that's specific to our

17 reinsured.

18 Q. You don't know what that is for

19 Ms. Mathews?

20 A. I don't.

21 Q. Let's go to the next document, which we'll

22 mark as Exhibit 4. I show you now Exhibit

23 4, which appears to be an income

24 protection policy which was provided by

25 Pan Am's attorneys in this case.

26

1 Before we get into the substance of it,
2 I'd like you to look at the first page at
3 the top where it says "MN" and it's
4 circled. And then underneath that, "2-A
5 plus." Do you know what that means?

9 A. I don't know what the MN means. I know
10 that the 2-A is an occupational class.

11 Q. Do you know what occupational class that
12 is?

13 A. I think it's a general occupation.

14 Whereas, you know, 4-A would be doctors
15 and professionals. And 3-A would be more
16 labor-intensive person.

17 Q. Does the plus mean anything to you?

18 A. I don't know. It doesn't mean anything to
19 me.

20 Q. Is this -- do you know whether this is an
21 own occupation or an all-occupation
22 policy?

23 A. This particular one, I do not know. It
24 depends on the occupation class.

25 Q. Well, I direct you to page four. That's

26

1 the definitions page.

2 A. Okay.

3 Q. And the definition of total disability.

4 A. Uh-huh. "Cannot work at his or her
5 regular job because of injury or sickness
6 for two years following two years of total
7 disability. The total disability requires
8 that the insured not be engaged in any
9 paid work."

10 Q. So is it your understanding for the first
11 two years it's an own-occupation policy;
12 is that right?

13 A. That's correct.

14 Q. And then does it become an all-occupation
15 policy after that?

16 A. It does.

17 Q. Has Pan American Life Insurance Company
18 determined whether Ms. Mathews is disabled
19 from her own occupation?

20 A. Not to my knowledge. Well, I would
21 imagine if we granted benefits for the
22 restricted amount of time in both
23 policies, then it would have been for any
24 and own occupation. It's both.

25 Q. Would have encompassed both?

26

1 A. Sure.

2 Q. As far as Pan Am is concerned, she's
3 disability from all occupations?

4 A. I don't have the specifics of the file, so
5 I can't speak to that.

6 Q. Would Mr. Jones know that?

7 A. He would.

8 Q. Well, I'll ask him when he comes in. I'm
9 gonna direct you to page six.

10 A. Okay.

11 Q. The first sentence of the rehabilitation
12 clause, which is in the upper right
13 column, do you see that?

14 A. I do see that.

15 Q. "We will pay for a rehabilitation program
16 that we approve." Do you see that?

17 A. I do.

18 Q. That's slightly different wording from the
19 language in the Exhibit 3.

20 A. It is.

21 Q. But does Pan American interpret that
22 differently than it does the language in
23 Exhibit 3?

24 A. Only an amount that, that, that could be
25 paid.

26

1 Q. But in terms of the -- I'm asking just
2 about the language. This one says, "A
3 rehabilitation program that we approve."

4 A. Correct.

5 Q. The other one says "A rehabilitation
6 program if we approve it in advance."

7 A. It's the same.

8 Q. That's the same?

9 A. That's correct.

10 Q. Next sentence says, "Maximum payment for a
11 single disability will be 24 times the
12 monthly benefit."

13 A. I see that.

14 Q. That's different than the other policy; is
15 that right?

16 A. It is.

17 Q. Do you know what the monthly benefit is
18 under this policy?

19 A. I do not.

20 Q. Do you know why there's a cap on the
21 monthly benefit provision in Exhibit 4?

22 MR. EVANS:

23 Objection. Calls for
24 speculation.

25 MR. KINNEY:

26

1 I'm asking him if he knew.

2 THE WITNESS:

3 I do not.

4 BY MR. KINNEY:

5 Q. Would the amount of the cap in any way
6 affect whether Pan Am would provide the
7 benefit?

8 A. No.

9 Q. In other words, if someone came to you
10 with a benefit program, the cost of which
11 exceeded the cap, would Pan Am still
12 provide the benefit even though the total
13 program exceeded the cap?

14 A. We may.

15 MR. EVANS:

16 Objection to an incomplete
17 hypothetical. Calls for speculation.

18 THE WITNESS:

19 We may.

20 BY MR. KINNEY:

21 Q. So that the factor of the cap itself would
22 not influence your decision as to whether
23 or not the program was acceptable?

24 MR. EVANS:

25 Same objection. Calls for

26

1 speculation and incomplete
2 hypothetical.

3 THE WITNESS:

4 That's correct.

5 BY MR. KINNEY:

6 Q. Next sentence, "With our permission, this
7 maximum may be waived."

8 A. Yes.

9 Q. You see that?

10 A. Yes.

11 Q. I take it from your earlier testimony that
12 that has never happened, to your
13 knowledge, that the maximum has been
14 waived; is that right?

15 A. That's correct.

16 Q. Does Pan Am have any policies in force as
17 to when it should or should not waive the
18 maximum benefit?

19 A. It does not.

20 Q. As the person most knowledgeable at Pan Am
21 on this provision of the policy, when do
22 you believe that Pan Am should waive the
23 maximum amount of the benefit?

24 MR. EVANS:

25 Objection. Calls for

26

1 Speculation. Calls for a legal
2 opinion and . . .

3 BY MR. KINNEY:

4 Q. You can answer.

5 A. We would waive the maximum based on the
6 type of program that the insured may be
7 enrolled.

8 Q. Can you give me an example?

9 A. Well --

10 MR. EVANS:

11 Same objection. Calls for
12 speculation.

13 BY MR. KINNEY:

14 Q. Go ahead.

15 A. If the person was only a high school
16 graduate and was pursuing a college degree
17 for an occupation, college degrees are
18 typically four years in nature. If we
19 felt that the college degree would meet
20 what this person was trying, and be able
21 to reenter the workforce with such degree,
22 I think we would give that consideration.

23 Q. Then the final sentence here is, "This
24 payment will have no affect on any other
25 benefit of this policy." Do you see that?

26

1 A. I do.

2 Q. That language is identical with the
3 language of the other policy?

4 A. Yes.

5 Q. And is interpreted the same way?

6 A. That's correct.

7 Q. Now, in policy Exhibit 3, we read a
8 sentence that said, "We will not pay for
9 any rehabilitation benefits,
10 rehabilitation expense covered by any
11 other source." Do you recall that?

12 A. That's correct.

13 Q. That language doesn't appear in Exhibit 4;
14 is that right?

15 A. That's correct.

16 Q. What is the affect of the absence of that
17 language in Exhibit 4?

18 MR. EVANS:

19 Objection. Calls for a legal
20 conclusion. Calls for speculation.

21 BY MR. KINNEY:

22 Q. Go ahead.

23 A. That we would not coordinate with another
24 benefit.

25 Q. Prior to the time that plaintiff's request

26

1 for rehabilitation benefits was denied,
2 how many times did you speak with
3 Mr. Jones about any aspect of plaintiff's
4 case?

5 A. At least one time.

6 Q. One that you can recall?

7 A. Vaguely.

8 Q. Was anyone else present at that one
9 conversation?

10 A. No.

11 Q. What was discussed in that conversation?

12 A. I don't recall exactly at what course of
13 the policy that we had this, that we had
14 this conversation.

15 Q. Do you recall what was said during the
16 conversation?

17 A. I don't.

18 Q. Not a single thing?

19 A. It depends, you know. A lot of things
20 happened prior to the filing for
21 rehabilitation. So I can't be sure what
22 point we had a discussion.

23 Q. Okay. Well, I mean, one of the things
24 that's my job to do is to find out what
25 you remember and what you don't remember.

26

1 So if you don't remember it, just say I
2 don't remember. Is that your correct
3 statement?

4 A. That's correct.

5 Q. Did you review the paper file, or a
6 computerized version of the paper file,
7 prior to the time the rehabilitation
8 benefits were denied?

9 A. I did.

10 Q. How many times did you review the file
11 before the denial of the rehab benefits?

12 A. At least once.

13 Q. Do you recall what you saw when you
14 reviewed the file at that time?

15 A. I recall the course of events.

16 Q. What course of events do you recall?

17 A. That we had previously denied benefits on
18 the disability portion. And through the
19 findings of the I.M.E. that we had and
20 through the review of our medical
21 director, we extended benefits of the
22 regular policies.

23 Q. Anything else?

24 A. That's it.

25 Q. At any time up until today, were you aware

26

1 that there was any kind of problem or
2 issue with the payment of premiums for the
3 policies?

4 A. I wasn't aware of that at any time.

5 Q. You never heard anything about a problem
6 with improper withdrawal of premiums from
7 plaintiff's account?

8 A. That I do recall.

9 Q. When did you first hear something about
10 that?

11 A. It was most -- it was probably while we
12 were out of the city during the hurricane.

13 Q. Where were you?

14 A. We were in Texas.

15 Q. Where at in Texas?

16 A. Irving or -- Dallas area.

17 Q. You moved there right after the Hurricane
18 Katrina?

19 A. That's correct.

20 Q. How long were you over there?

21 A. Four months. About four months.

22 Q. I'm sure this is clearer to you than to
23 me. When exactly was Hurricane Katrina?

24 A. At the end of August.

25 Q. August of '05?

26

1 A. That's correct.

2 Q. So you were there until the end of the
3 year?

4 A. I was there until the end of November.

5 Q. Then you came back to New Orleans?

6 A. That's correct. Different staff came back
7 at different times. But I believe I was
8 back at the end of November.

9 Q. And your office right now is, I think we
10 said right across the street from this
11 office on Poydras Street in New Orleans?

12 A. That's correct.

13 Q. When you came back after the move to
14 Texas, did you come directly back to the
15 Poydras Street address?

16 A. We did.

17 Q. Did Mr. Jones come back from Texas the
18 same time you did?

19 A. He did.

20 Q. Same for Ms. Bourg?

21 A. Yes.

22 Q. Well, I don't know if this will help you
23 at all. But my understanding is that
24 Ms. Mathews became disabled in December of
25 '05. Which, if I understand your

26

1 testimony correctly, would be after you
2 moved back here to New Orleans.

3 A. That's correct.

4 Q. So does that, in any way, refresh your
5 recollection as to when you first heard
6 that there was a problem with the
7 withdrawals from her bank account?

8 A. I remember that -- I don't remember
9 specific Ms. Mathews. I do remember that
10 there was an issue with withdrawals and a
11 lot of overdraft fees associated with
12 those withdrawals. I specifically
13 remember that us being in Texas when I was
14 aware of that.

15 Q. But you don't recall if that particular
16 problem had to do with Ms. Mathews?

17 A. I don't.

18 Q. Do you recall specific to Ms. Mathews, not
19 just a general recollection, but specific
20 to Ms. Mathews, at any time do you recall
21 hearing about or seeing some kind of
22 problem regarding Ms. Mathews and
23 withdrawals from her specific account?

24 A. I don't.

25 Q. In terms of claims processing policies and
26

1 practices, is there some coordination --
2 let me ask you this. Are you at all in
3 charge of personnel who collect the
4 premiums?

5 A. No.

6 Q. When a claim comes in in a disability
7 policy, some policies have a waiver of
8 premium term; is that right?

9 A. That's correct.

10 Q. Do you recall whether Ms. Mathews' policy
11 has a waiver of premium term?

12 A. I don't.

13 Q. Well, it's right in front of you. Where
14 would you see it?

15 A. Well, sometime in some policies it's
16 embedded within the policy. And some
17 policies, it is a separate benefit listed
18 on the schedule of benefits.

19 Q. Well, I want you to assume that there's a
20 waiver of premium benefit in these
21 policies.

22 A. Okay.

23 Q. Rather than studying these policies right
24 now. When a claim comes in on a policy in
25 which there's a waiver of premium benefit,

26

1 what kind of communication takes place
2 between your department and other people
3 at Pan American about the premium?

4 A. There generally is no communication.

5 Q. Well, what happens with the premiums in
6 that situation? Do you know?

7 A. If we were to go ahead and place a
8 personal waiver premium?

9 Q. Yeah.

10 A. The general policy?

11 Q. Yes.

12 A. We would handle that within the claims
13 department.

14 Q. How would you handle that?

15 A. By a, system work. And we would place the
16 policy on a premium waiving status,
17 reverse and refund premiums, if necessary,
18 and waive premiums going forward.

19 Q. When you say you would place the policy on
20 a premium waiving status --

21 A. Correct.

22 Q. -- is that done on a computer?

23 A. It is.

24 Q. And so a computer screen comes up, and you
25 type something into it; is that right?

26

1 A. Correct. That's a code. A status coding
2 policy.

3 Q. What impact does typing that code into the
4 computer have on the collection of policy
5 benefits, of policy premiums?

6 A. If the code is put into a premiums, all
7 billing activity should cease.

8 Q. And have you experienced a situation where
9 that code was put into the computer but
10 billing activity did not cease?

11 A. There could be a situation. Because our
12 systems are run in overnight batches, that
13 if we put it on a Thursday and a bill was
14 set to generate on Thursday, just by
15 coincidence it was that date, that bill
16 would go out. Because the status really
17 wouldn't take effect until the following
18 morning.

19 Q. Are you familiar with the fact that some
20 premiums are paid to Pan American through
21 direct withdrawals from the policyholder's
22 account?

23 A. I am.

24 Q. Is it your understanding that typing this
25 code into the computer at the claims

26

1 department will stop withdrawals,
2 automatic withdrawals, from the
3 policyholder's account?

4 A. I don't know the effect on that, if it's a
5 direct effect.

6 Q. Has anyone at Pan Am told you that there
7 was some problem in 2006 with coordinating
8 the waiver of premiums that the claims
9 department did and the automatic
10 withdrawals from policyholder's accounts?

11 A. No.

12 Q. Do you know whether a waiver of premium
13 code was ever placed into Ms. Mathews'
14 computer data?

15 A. No.

16 Q. So then I take it you don't know whether
17 automatic withdrawals continued to take
18 place after such event?

19 A. That's correct.

20 Q. And you don't recall anybody bringing that
21 specifically to your attention as to
22 Ms. Mathews?

23 A. No.

24 Q. Now, we've got two insurance policies here
25 in front us for Ms. Mathews. And you

26

1 testified earlier it's -- you've seen
2 other cases where disability claimants
3 have more than one insurance policy with
4 Pan Am.

5 A. That's correct.

6 Q. So does Pan Am have a policy or practice
7 when a claim comes in to determine what
8 policies the insured has?

9 A. We do.

10 Q. Could you describe that policy practice?

11 A. We generally run a Social Security number
12 search to see if there are any other
13 policies.

14 Q. Does that show all the other policies?

15 A. It would show any other policies that that
16 person has under that Social Security
17 number.

18 Q. Was that done for Ms. Mathews' claim?

19 A. It was.

20 Q. And it showed both of those policies; is
21 that right?

22 A. It did.

23 Q. Did it show any other policies?

24 A. Not to my knowledge.

25 Q. Was there any other policy?

26

1 A. Well, we later found out that there was
2 another policy.

3 Q. Do you know what kind of policy that is?

4 A. I think that's also a disability-type
5 policy.

6 Q. Does it have a separate, you know, policy
7 of the sort that, written policy of the
8 sort that Exhibit 3 or Exhibit 4 --

9 A. It could be the same. It would be exactly
10 the same.

11 Q. But it has a different policy number?

12 A. It would have definitely have a different
13 policy number and a different policy date.

14 Q. Do you know whether that policy number,
15 let's call that the third policy, do you
16 know whether the third policy showed up on
17 Ms. Mathews' Social Security number when
18 Pan Am did its initial search for her
19 policies?

20 A. I understand that it did not.

21 Q. Do you know how that happened?

22 A. I believe that the other policy had a
23 different Social Security number, or it
24 was a digit off or something of that
25 nature.

26

1 Q. Who told you that?

2 A. I don't know if anybody told me it. I
3 just knew of a situation where there was a
4 third policy. So I can't say specifically
5 that anybody told me it. I just know the
6 course of events, you know, of the policy
7 file.

8 Q. And your recollection is you determined
9 that the Social Security number for the
10 third policy was different than the Social
11 Security number for the first two?

12 A. Well, I think what we found out that there
13 was another policy for Ms. Mathews under a
14 different number, not like the number that
15 was on these policies.

16 Q. A different Social Security number?

17 A. A different -- yeah, it must have been a
18 different Social Security number because
19 that's generally our search criteria or
20 birth date. So it had to be one of the
21 two.

22 We generally don't go further, you
23 know, when the Social Security number
24 comes with the policies, that generally
25 concludes our search.

26

1 Q. Do you search only by Social Security
2 number?

3 A. We will sometimes search by, well, we'll
4 search -- and birth date. But we'll
5 sometimes search by name. But we find
6 that to be, we have found that to be
7 flawed because that data is only as good
8 as -- because if they have a middle
9 initial or they spell their name with --
10 like Cory. I spell it C-O-R-Y and they
11 spell it C-O-R-E-Y. I mean, it's an exact
12 date of match, so it would not come up.
13 So we, basically, suspended doing that
14 because of issues we had with that.

15 Q. When did you suspend searching by name?

16 A. I couldn't tell you. No specific date.

17 Q. As of December of 2005, were you still
18 searching by name?

19 A. I would say most probably.

20 Q. So in December of 2005, you were searching
21 by name, Social Security number, and birth
22 date; is that right?

23 A. We were probably searching by those
24 criteria. Any criteria that the system
25 would allow us to search by, which were

26

1 usually those.

2 Q. And same question for February of 2006?

3 A. Yeah.

4 Q. When did you find out that Ms. Mathews was
5 the beneficiary of the third policy?

6 A. I don't recall.

7 Q. How did you find that out?

8 A. Well, we prepare reports through our
9 actuarial department. And it was through
10 that when we added another policy, you
11 know, to that report. That's when I found
12 out, because I'm the keeper of that
13 report.

14 Q. I see. And did you make any inquiries of
15 anyone when you saw a third policy arise
16 for Ms. Mathews?

17 A. I did not.

18 Q. It didn't cause you any concern that there
19 was a third policy that had been missed
20 for a considerable period?

21 A. It may have been questioned by actuarial
22 just because the disability date was so
23 far before then. We actually reported it
24 to them.

25 So they may have questioned it.

26

1 Because they would have all had the same
2 disability date, but the reporting dates
3 were different. So they would have
4 inquired about that.

5 Q. Okay. When a claimant has a new
6 disability claim like Pan American, are
7 they required to submit a claim on a Pan
8 American form?

9 A. They are. We send them out the
10 appropriate forms.

11 Q. Do you also request that they get an
12 attending physician statement?

13 A. We do.

14 Q. And on the attending physician statement,
15 do you ask a question about the claimant's
16 prognosis?

17 A. We do.

18 Q. Do you ask the attending physician to give
19 some estimate of how long the claimant
20 will be disabled?

21 A. That is a question on the form.

22 Q. What do you do with that particular piece
23 of information when it comes in? Is that
24 computerized in some way?

25 A. No. It's restored in a hard paper file.

26

1 Q. Okay. If you determine that a claimant is
2 disabled within the definition of the
3 policy, do you begin making benefit
4 payments immediately?

5 A. If that person has satisfied the
6 elimination portion of their policy.

7 Q. Let's say that in Ms. Mathews' policy
8 there's a 60-day elimination period, let's
9 just say. After 60 days, will you, will
10 Pan Am send her money if she qualifies as
11 disabled?

12 A. Not on the 61st day because we may not
13 determine if she was disabled. At the
14 point we determined she was disabled, we
15 would start from day 61 and go forward.

16 Q. Well, let's say --

17 A. Pay benefits in the rears.

18 Q. Let me see if I've got this clear. Let's
19 say that on day 75 you determine then that
20 Ms. Mathews is disabled within the meaning
21 of the policy.

22 A. Yes.

23 Q. When will she receive her first check?

24 A. Shortly after.

25 Q. And that will be for the first month's

26

1 disability benefit; is that right?

2 A. That would be for payment in the rears.

3 Q. Well, I'm asking -- let's say she's got a
4 60-day elimination period. On the 75th
5 day you decide she's disabled.

6 A. We may wait until the 90th day and pay her
7 for that, you know, for that month.

8 Q. So you pay, wait until the end of the --

9 A. Generally, because we pay in the rears.

10 We pay a month in the rears. Correct.

11 Q. So, in other words, at the end of the 90th
12 day, she'll get a payment that will cover
13 her from day 60 to day 90?

14 A. That's correct.

15 Q. And let's say -- let's go back to the
16 attending physician statement. Let's say
17 the attending physician statement says
18 that his prognosis is that she'll be
19 disabled for six months, let's just say.

20 At the end of six months, do you just
21 automatically cancel her benefits?

22 A. That's not our practice.

23 Q. What is your practice in terms of --

24 A. Our practice is generally a little bit
25 before, you know, we inform them that, you

26

1 know, your course of disability is about
2 to end, and to submit another attending
3 physician statement.

4 Q. Was that done in Ms. Mathews' case?

5 A. I don't know.

6 Q. Did anyone ever tell you that Ms. Mathews'
7 benefits were cut off after they had begun
8 being paid?

9 A. No.

10 Q. When you reviewed her claim file, did you
11 notice that there had been a period where
12 her benefits had been cut off?

13 A. I didn't recall.

14 Q. Did you know that Ms. Mathews made a
15 complaint to the counsel of the Department
16 of Insurance about Pan American Life
17 Insurance Company?

18 A. I believe I do know that.

19 Q. Do you know what she complained about?

20 A. No.

21 Q. Did you have anything to do with handling
22 that?

23 A. I may have. I generally handle the
24 complaints. I generally, I review the
25 file, write the letter.

26

1 Q. When, prior to today, was the last time
2 that you reviewed Ms. Mathews' claim file?

3 A. Probably at the point of attorney
4 intervention when we received, you know, a
5 letter from either your office or some
6 other attorney's office.

7 Q. And then you didn't handle it after that?

8 A. No, I didn't.

9 Q. Did you know that Ms. Mathews made a
10 complaint to the Napa County District
11 Attorney's Office about Pan Am's handling
12 her claim?

13 A. I do recall that, that there was a
14 secondary complaint to another
15 organization.

16 Q. Do you recall what was the nature of her
17 complaint to that organization?

18 A. I don't.

19 Q. Do you recall whether Ms. Mathews'
20 complaint to the California Department of
21 Insurance came before or after she was put
22 under surveillance by a private
23 investigator?

24 A. I don't recall.

25 Q. Was your decision to have her surveilled
26

1 by a private investigator influenced by
2 the fact that she had made a complaint to
3 the Department of Insurance?

4 A. No.

5 Q. Was your decision to have her put under
6 surveillance by a private investigator
7 influenced by the fact that she had made a
8 complaint to the Napa County District
9 Attorney's Office?

10 A. No.

11 Q. Do you ever recall Mr. Jones telling you
12 that Ms. Mathews was a difficult customer,
13 or words to that effect?

14 A. No.

15 Q. Do you ever recall him saying that he had
16 some argument with her?

17 A. No.

18 Q. Do you ever recall Ms. Bourg saying that
19 she had some difficulty dealing with
20 Ms. Mathews?

21 A. No.

22 Q. Is there a department at Pan Am called the
23 benefits department?

24 A. Yes.

25 Q. Do you work in the benefits department?

26

1 A. Yes.

2 Q. Are you the supervisor of the benefits
3 department?

4 A. Yes.

5 Q. Do you have -- strike that. At any time
6 do you recall a person who worked in the
7 benefits department who would have signed
8 a letter with the initials C.R.M.C.?

9 A. Yes.

10 Q. Who's that?

11 A. That's our customer relations management
12 center. I also have authority over that
13 department as well.

14 Q. When you discussed the one occasion that
15 you can recall discussing something about
16 rehabilitation benefits with Mr. Jones in
17 the Mathews matter, do you recall
18 discussing with him that there were two
19 separate policies with rehabilitation
20 benefits?

21 A. No.

22 Q. And the exercise that you and I went
23 through a few minutes ago looking and
24 comparing the two policy provisions, did
25 you go through a similar exercise with
26

1 Mr. Jones?

2 A. I did not.

3 Q. When you talked to Mr. Jones about
4 rehabilitation benefits, did you
5 personally take a look at either of the
6 policies that we talked about today?

7 A. I did not.

8 Q. At that time you talked to Mr. Jones about
9 rehabilitation benefits for Ms. Mathews,
10 did you know that the policy that she had
11 provided for rehabilitation benefits?

12 A. Yes.

13 Q. How did you know that?

14 A. That was the nature of -- that's how it
15 was brought to my attention through
16 Mr. Jones.

17 Q. Pan American has other disability
18 insurance policies besides the two we
19 looked at, doesn't it?

20 A. They have other policy forms.

21 Q. And do the other policy forms all contain
22 provision for rehabilitation benefits?

23 A. Not to my knowledge.

24 Q. Do any of the other policy forms contain
25 provisions for rehabilitation benefits?

26

1 A. I would imagine they do.

2 Q. But you don't know?

3 A. The majority of forms I have seen do
4 contain a provision.

5 Q. Most do?

6 A. The ones that I have seen.

7 Q. Taken on a per-claim basis, in other
8 words, of the 132 to 135 claims per month
9 that are processed by your department, do
10 you have any idea what percentage of those
11 claims arise under policies that contain
12 rehabilitation benefits?

13 A. I would say -- it's difficult to say.

14 It's the latter policies, the more recent
15 policy forms that do. I believe some of
16 the older policy forms do not.

17 Q. Do you have any estimate, though, of the
18 132 to 135 per month?

19 A. I couldn't begin to speculate.

20 Q. Have you ever talked to any of the Pan
21 American employees in the underwriting
22 department about the language of the
23 rehabilitation policies?

24 A. I have not.

25 Q. Do you know, as you sit here today, why

26

1 Pan American includes a provision on
2 rehabilitation benefits in its newer
3 policies?

4 MR. EVANS:

5 Objection. Calls for
6 speculation.

7 THE WITNESS:

8 I would imagine that that is
9 something that is, has become an
10 industry practice and is provided by
11 other insurance, other companies as
12 well.

13 BY MR. KINNEY:

14 Q. You don't know?

15 A. I don't know what?

16 Q. You don't know why it's --

17 A. I don't know why a benefit would be added
18 or not added.

19 Q. Do you know if there's any advertising
20 that Pan Am does regarding rehabilitation
21 benefits?

22 A. I don't know about any advertise that Pan
23 American does on these policies.

24 Q. Can we go off the record for one second?

25 MR. EVANS:

26

1 Sure.

2 (Off the record.)

3 BY MR. KINNEY:

4 Q. Mr. Simon, I'd like to show you another
5 document we'll mark as Exhibit 5 for
6 purposes of this deposition. And I show
7 you that document. I'll tell you that
8 document was produced by Pan American's
9 counsel in this case. And I'll ask you if
10 you can identify that.

11 (Exhibit 5, medical director's
12 form, was marked for
13 identification.)

14 A. Yes.

15 Q. What is it?

16 A. This is from our medical director.

17 Q. Is this the document you referred to
18 earlier as demonstrating that further
19 study needed to be done to determine
20 whether or not Ms. Mathews was disabled?

21 A. Yes.

22 Q. Can you tell when your department received
23 this document?

24 A. April 25, 2006.

25 Q. Was there something in this document that

26

1 led you to believe that Ms. Mathews should
2 be sent to an independent medical
3 examination?

4 A. There is.

5 Q. What is it?

6 A. There is something that indicates that
7 Dr. Brown was not qualified to elaborate
8 on her condition or diagnosis.

9 Q. Okay. That's it?

10 A. I have to read through the entire
11 document.

12 Q. I don't want you to necessarily do that.
13 When you receive a report from the medical
14 director that indicates to you that an
15 independent medical examination is
16 necessary, how long after the report is
17 received do you typically schedule the
18 I.M.E.?

19 A. We try to do it within 30 to 60 days.

20 Q. Do you know of any reason in the Mathews
21 case why the I.M.E. would not take place
22 for, say, six months after this April 25th
23 date?

24 A. I don't.

25 Q. Would that seem unusual to you?

26

1 A. It's not our usual practice.

2 Q. Are you aware of any events that came up
3 in the Mathews case after April 25, 2006
4 that influenced Pan Am's decision as to
5 whether or not to send Ms. Mathews to an
6 independent medical examination?

7 A. All of this document, to my knowledge.

8 Q. I'll show you another document which we'll
9 mark as Exhibit 6 to this deposition.

10 You've been handed a document marked as
11 Exhibit 6?

12 (Exhibit 6, letter dated May 3,
13 2006, was marked for
14 identification.)

15 A. Correct.

16 Q. Which appears to be a letter dated
17 May 3, 2006. Do you see that?

18 A. That's correct.

19 Q. And is it your understanding that the
20 C.R.M.C. referenced here -- let me ask it
21 this way. Who was C.R.M.C.?

22 A. C.R.M.C. is our customer relations
23 management center or our call center.

24 Q. You see this is a letter that discusses
25 the waiver of premium issue? Do you see

26

1 that?

2 A. Yes.

3 Q. You see the sentence, "Our benefits
4 department has advised that you are not
5 currently on waiver since you returned to
6 work on March 15, 2006?" Do you see that?

7 A. I do.

8 Q. The benefits department, would that be the
9 department, the claims department?

10 A. Yes.

11 Q. So do you know who at the benefits
12 department would have provided this
13 information to C.R.M.C.?

14 A. No.

15 Q. Could it have been anyone other than
16 Mr. Jones or Ms. Bourg?

17 A. No.

18 Q. So it had to be one of them?

19 A. It was one of the two.

20 Q. As you sit here today, do you know why
21 Mr. Jones or Ms. Bourg thought that
22 Ms. Mathews was back at work on
23 March 15, 2006?

24 A. No.

25 Q. What kind of information would Pan
26

1 American want in order to make that
2 statement?

3 A. Generally, a statement from her treating
4 doctor.

5 Q. To the effect that she was back at work?

6 A. Yes. Because, generally, the insured will
7 indicate to the doctor that they have
8 returned to work or are planning to return
9 to work, or the doctor says you can return
10 to work.

11 Q. Would Pan Am typically make a phone call
12 to the insured to make sure that they were
13 back at work?

14 A. We generally would not.

15 Q. Would you make a phone call to the
16 employer?

17 A. Not for this type of policy.

18 Q. For a group policy you would?

19 A. Yes.

20 Q. Does Mr. Jones and Ms. Bourg, that
21 department, also handle group policies?

22 A. No.

23 Q. Do you supervisor the group policy claims
24 department?

25 A. I do.

26

1 Q. And there are also group disability
2 policies; is that right?

3 A. There are group disability policies.
4 That's correct.

5 Q. And somebody else handles those?

6 A. That's correct. Somebody else within my
7 department.

8 Q. Within your department?

9 A. That's correct.

10 Q. How many employees do you have who handle
11 group disability policies?

12 A. One.

13 Q. Let me show you another document which
14 we'll mark as Exhibit 7. I'll show you
15 that document, sir, and ask if you can
16 identify that?

17 (Exhibit 7, letter from Michael
18 Jones, was marked for
19 identification.)

20 A. This is a letter from Michael Jones to the
21 insured.

22 Q. Do you recall whether Mr. Jones discussed
23 this letter with you prior to the time he
24 wrote it?

25 A. I don't recall.

26

1 Q. Do you see in the last sentence of the
2 first paragraph, he asks for a detailed
3 plan of treatment and estimated costs and
4 estimated date of rehabilitation
5 completion? Do you see that?

6 A. I do.

7 Q. Is that what you typically ask for when
8 someone asks for rehabilitation benefits?

9 A. Yes.

10 Q. Let's go to the next document, which we'll
11 mark as Exhibit 8. I'll show you this
12 document. And I'll represent to you that
13 this was a document produced by Pan
14 American's attorneys in this matter.

15 (Exhibit 8, document, was
16 marked for identification.)

17 A. Okay.

18 Q. First thing is I notice that there are
19 some, it's a little hard to read, but
20 there are some marginal notations on this
21 document.

22 A. I do see that.

23 Q. Can you identify the handwriting on these
24 marginal notations?

25 A. It's not mine. So, no, I can't identify

26

1 it.

2 Q. Is it Mr. Jones?

3 A. I don't believe so. His is generally
4 worse than mine.

5 Q. Let's go to the second page of this
6 document. I want you to look at the last
7 two paragraphs.

8 I'm sorry. Let's go to the third page.

9 I want you to look at the last two
10 paragraphs of this document. Have you
11 seen those? Have you had a chance to look
12 at those?

13 A. I've reviewed them.

14 Q. Do you understand that this was
15 Ms. Mathews' response to Mr. Jones' letter
16 that we have as Exhibit 7?

17 A. Yes, this is her response. That's
18 correct.

19 Q. And is it your belief that her response
20 was not adequate to grant rehabilitation
21 benefits?

22 A. That's correct.

23 Q. Do you see she wants to -- she was going
24 to try to retrain for a nurse practitioner
25 certification? Do you see that?

26

1 A. Yes.

2 Q. And that there were four possibly schools
3 that she could attend?

4 A. Correct.

5 Q. And she tells you something about where
6 she is in terms of attending these
7 schools?

8 A. That's correct.

9 Q. And, in general, what she thinks would be
10 involved in retraining to be a nurse
11 practitioner?

12 A. Correct.

13 Q. So what other information was necessary,
14 other than what was provided here in
15 Exhibit 8, for Ms. Mathews to obtain
16 rehabilitation benefits?

17 A. We would have liked to have seen possibly
18 a course study or the course of study that
19 goes along and cost associated with that.

20 Q. Anything else?

21 A. And certainly a more, a more, more really
22 of her commitment of what she is, you know
23 aiming to do. She abandoned her
24 bachelors' degree.

25 You know, without more detail of what's
26

1 gonna go on, we couldn't make any, you
2 know, any decision or anything that, you
3 know, that she may or may not abandon such
4 a program as well.

5 Q. Well, do you know whether that sort of
6 information was then requested of
7 Ms. Mathews?

8 A. I don't.

9 Q. Should it have been?

10 A. It may have been helpful in further
11 evaluating.

12 Q. Do you know how long after this letter of
13 August 23rd it was until Pan Am advised
14 Ms. Mathews that her request for
15 rehabilitation benefits was denied?

16 A. I don't.

17 Q. Was it more than 48 hours?

18 A. I couldn't tell you. I don't know.

19 Q. Did you see this document, Exhibit 8,
20 prior to the time that Pan Am notified
21 Ms. Mathews that her rehabilitation
22 benefits were denied?

23 A. I had not.

24 Q. If you had seen this document, Exhibit 8,
25 would you have directed Mr. Jones to do

26

1 anything in particular in response to this
2 document?

3 MR. EVANS:

4 Object. Calls for speculation.

5 BY MR. KINNEY:

6 Q. You can answer.

7 A. It's difficult to say, but I may have.

8 Q. You may have done what?

9 A. I may have asked him to get some
10 additional information from her to expand
11 upon this.

12 Q. As you sit here today, do you know whether
13 Mr. Jones ever asked her for any
14 additional information to expand upon
15 this?

16 A. Not to my knowledge.

17 Q. Do you know an employee at Pan American by
18 the name of Glenda Griffin?

19 A. I know the name. I can't associate the
20 face.

21 Q. Do you know what department Ms. Griffin
22 works in?

23 A. She may be in policy or a service or
24 premium bill, one of the two.

25 Q. Does Pan American have a department that

26

1 handles administrative complaints such as
2 complaints made to the California
3 Department of Insurance?

4 A. I believe there is a department that --
5 well, I believe the legal department
6 handles the recording end and of tracking
7 of the responses. So there is somebody
8 that maintains a complaint log. I'm not
9 sure who that person is.

10 Q. Do you know who actually makes the
11 responses to, say, the California
12 Department of Insurance? Is that the
13 legal department?

14 A. If it was based on a claims --

15 Q. Yes.

16 A. I would generally respond.

17 Q. So you don't -- in other words, if
18 Ms. Mathews had made a complaint to the
19 California Department of Insurance in 2006
20 about the way the claim was being
21 handled --

22 A. Correct.

23 Q. -- that would be something you would
24 respond to?

25 A. It would be something either I would

26

1 respond -- see, the procedures may have
2 been different back then. But it would
3 either be something I would respond to
4 directly, or a request for information
5 would be given by the person that was
6 maybe handling the responses at that time.
7 And they would refer to the different
8 exhibits that they would attach with the
9 file.

10 MR. KINNEY:

11 I think I'll stop there with
12 Mr. Simon. Would you like to ask him
13 any questions?

14 MR. EVANS:

15 No.

16 MR. KINNEY:

17 That's it.

18 (Conclusion.)

19

20

21

22

23

24

25

26

1 Video deposition of CORY SIMON

2 taken on March 13, 2008

3

4

5 WITNESS' CERTIFICATE

6

7

8 I have read or have had the foregoing
9 testimony read to me and hereby certify that
10 it is a true and correct transcription of my
11 testimony, with the exception of any attached
12 corrections or changes.

13

14

15

16

17

18 CORY SIMON

19

20

21

22

23

24

25

26

1 REPORTER'S CERTIFICATE

2 I, THERESA MATHERNE, Certified Court
3 Reporter, do hereby certify that the
4 above-mentioned witness, after having been
5 first duly sworn by me to testify to the
6 truth, did testify as hereinabove set forth;

7 That the testimony was reported by me in
8 shorthand and transcribed under my personal
9 direction and supervision, and is a true and
10 correct transcript, to the best of my ability
11 and understanding;

12 That I am not of counsel, not related to
13 counsel or the parties hereto, and not in any
14 way interested in the outcome of this matter.

15

16

17

18

19

20 THERESA (TERRI) MATHERNE

21 CERTIFIED COURT REPORTER

22 REGISTERED PROFESSIONAL REPORTER

23

24

25